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NEIFELD IP LAW, PC 4813-B EISENHOWER AVENUE ALEXANDRIA, VA 22304			EXAMINER JANVIER, JEAN D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Scroggie et al.

Appeal No. 2008-4478
Application No. 09/401,939

Mailed: July 18, 2008

DECISION ON PETITIONS

This is a decision on the following petitions:

“37 CFR 1.81 Petition to Withdraw the Notification of Non-compliant Appeal Brief Dated March 31, 2008,” filed April 9, 2008 (“First Petition”); and

“37 CFR 1.81 Petition to Withdraw the Notification of Non-compliant Appeal Brief Dated April 21, 2008,” filed May 20, 2008 (“Second Petition”).

These petitions will be treated as petitions to the Chief Administrative Patent Judge under 37 C.F.R. § 41.3(b).

FINDINGS

1. On August 10, 2006, Appellants filed an original Appeal Brief (“Original Brief”) citing and quoting, in the arguments section, a dictionary definition of the term “voucher.” App. Br. at 15.
2. On November 29, 2007, the Board of Patent Appeals and Interferences (“Board”) entered an Order stating:

The dictionary [definition of voucher] should be included along with a copy of said term in the Evidence Section of the Appeal Brief. *See* MPEP Section 1205.02.

Order at 2. The Order also ordered that the application be returned to the Examiner for the Examiner “to instruct Appellants to file a Paper adding the abovementioned reference to the [E]vidence Appendix.” Id. at 3.
3. On March 31, 2008, the Examiner entered a Notification of Non-compliant Appeal Brief advising Appellants that the Original Brief was defective and specifically that the term “voucher” and related dictionary definition should be added to the evidence appendix of the Original Brief.
4. 37 C.F.R. § 41.37(c)(1)(ix), which sets forth the types of evidence that must be presented in the evidence appendix of an appeal brief, does not identify dictionary definitions as a type of evidence that must be presented in the evidence appendix for such definitions to be considered by the Board in an *ex parte* appeal.
5. On April 9, 2008, Appellants filed a “37 CFR 41.37 Replacement Appeal Brief” (“First Replacement Brief”), in which the citation to a dictionary was removed from the body of the brief (p. 15).
6. As indicated above, on April 9, 2008, Appellants also filed the First Petition, requesting, *inter alia*, that the Notification of Non-compliant

Appeal Brief be withdrawn as to the Original Brief and that such brief be reinstated

7. On April 21, 2008, the Patent Appeal Center Specialist entered a Notification of Non-Compliant Appeal Brief advising Appellants that the First Replacement Brief was defective and specifically that the Status of Claims and Summary of Claimed Subject Matter sections were deficient.

8. The Status of Claims and Summary of Claimed Subject Matter sections of the First Replacement Brief are identical to those sections of the Original Brief.

9. On May 20, 2008, Appellants filed a “37 CFR 41.37 Second Replacement Appeal Brief” (“Second Replacement Brief”), including modifications to the Status of Claims and Summary of Claimed Subject Matter sections of the Second Replacement Brief as compared to those sections of the Original and First Replacement Briefs. The modifications made to the Status of Claims and Summary of Claimed Subject Matter sections of the Second Replacement Brief corrected defects in those sections of the Original and First Replacement Briefs.

10. As indicated above, on May 20, 2008, Appellants also filed the Second Petition requesting, *inter alia*, that the Notification of Non-compliant Appeal Brief be withdrawn as to the First Replacement Brief and that the Original Brief be reinstated.

11. Based on Appellants’ submission of the Second Replacement Brief, on July 16, 2008, the appeal for this application was docketed as Appeal No. 2008-4478.

DISCUSSION

The Original and First Replacement Briefs both contained defective Status of Claims and Summary of Claimed Subject Matter sections. Those defects were corrected in the Second Replacement Brief. Thus, the filing of the Second Replacement Brief renders moot any alleged or actual defects in the Original and First Replacement Briefs.

DECISION

In view of the foregoing, the First and Second Petitions are DISMISSED as moot. The appeal process will proceed with Appellants' position being presented by the Second Replacement Brief and the Reply Brief, filed April 6, 2007, and the Examiner's position being presented by the Examiner's Answer, entered February 27, 2007.

The merits panel to which this appeal is assigned for decision is authorized to consider, to the extent it may be relevant, Appellants' statement in the Original Brief, p.15, that:

A voucher means "a document that provides supporting evidence for a claim, e.g. a receipt proving that a purchase was made." See for example:

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861732375>.



Michael R. Fleming
Chief Administrative Patent Judge

Appeal No. 2008-4478
Application No. 09/401,939

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